

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ROBERT WAYNE GIBBONS,

Plaintiff,

v.

BETTY J. GOULD, ROBERT JIMMERSON,
JOHN TUNHEIM, GARY TABOR,

Defendants.

No. C12-5819 BHS/KLS

REPORT AND RECOMMENDATION
Noted For: December 21, 2012

Before the Court is Plaintiff's voluntary motion to dismiss without prejudice. ECF No. 15. The undersigned recommends that the motion be granted.

BACKGROUND

On September 28, 2012, Plaintiff filed a prisoner civil rights complaint. ECF No. 7. On October 9, 2012, the Court ordered Plaintiff to show cause why his case should not be dismissed for failure to state a claim. Alternatively, Plaintiff was directed to file an amended complaint on or before November 2, 2012. ECF No. 9. On October 17, 2012, Plaintiff filed an amended complaint. ECF No. 11. The Court found the amended complaint to be deficient and granted Plaintiff another opportunity to show cause or amend his complaint. ECF No. 13. On November 19, 2012, Plaintiff filed a letter with the Court Clerk stating that he is "formally requesting to withdraw" his civil rights complaint. ECF No. 15.

DISCUSSION

Rule 41 sets forth the circumstances under which an action may be dismissed. Under Rule 41(a)(1), an action may be dismissed by the plaintiff without order of court:

1 (i) by filing a notice of dismissal at any time before service by the adverse party
2 of an answer or of a motion for summary judgment, whichever first occurs, or (ii)
3 by filing a stipulation of dismissal signed by all parties who have appeared in the
4 action.

5 None of the defendants have been served in this matter. The Court should grant
6 Plaintiff's motion (ECF No. 19) and dismiss this action without prejudice. Plaintiff's pending
7 motions (ECF Nos. 13 and 17) should be denied as moot.

8 WRITTEN OBJECTIONS

9 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil
10 Procedure, the parties shall have fourteen (14) days from service of this Report and
11 Recommendation to file written objections. See also Fed. R.Civ.P. 6. Failure to file objections
12 will result in a waiver of those objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140
13 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to set the
14 matter for consideration on **December 21, 2012**, as noted in the caption.

15 **DATED** this 30th day of November, 2012.

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18 Karen L. Strombom
19 United States Magistrate Judge
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